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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of  
Federal-State Joint Board on  
Universal Service

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CC Docket No. 96-45

**STATE MEMBERS' REPORT  
ON THE UNIVERSAL SERVICE SUPPORT  
FOR RURAL HEALTH CARE PROVIDERS**

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## **STATE MEMBERS' REPORT ON THE UNIVERSAL SERVICE SUPPORT FOR RURAL HEALTH CARE PROVIDERS**

The State members of the Federal-State Joint Board (Joint Board) on universal service submit the following report to the Federal Communications Commission (FCC) for its consideration before issuing final rules to provide universal service support to rural health care providers.

Section 254(h) adds a new dimension to the traditional concept of universal service by including public access points and community centers, such as schools, libraries, and health care providers, as eligible recipients of federal universal service support.<sup>1</sup> Section 254(h)(1)(A) provides that a telecommunications carrier shall offer requested telecommunications services to health care providers located in rural areas at rates which are reasonably comparable to rates for similar services offered to urban health care providers in that state. Furthermore, the carrier will receive an offset to its contribution to the federal universal service fund in an amount equal to the difference between the rural rate and the comparable urban rate for the service.

As with most "new" programs, the question of how to structure the most effective mechanism is compounded by the lack of information about users' needs and the costs incurred to address such needs. To assist in the collection of data which would facilitate the creation of an appropriate program, the FCC appointed an Advisory Committee on Telecommunications and Health Care (Advisory Committee) to make recommendations on the cost, needs, and challenges of telemedicine. The Advisory Committee's efforts and recommendations provided valuable information to the discussion and their work is greatly appreciated.

In the Recommended Decision, the Joint Board on universal service recommended that the FCC seek further information on the telecommunications needs of the rural health care providers and the cost of providing those services prior to the adoption of final rules.<sup>2</sup> The Joint Board expressed its concern about the paucity of the record, and the Joint Board's decision to delay detailed recommendations on these issues reflected its desire to proceed cautiously in implementing programs which required significant financial support through the federal universal service fund.

Despite the input from the Advisory Committee and the various commentators addressing this issue, the challenges to successfully implementing telemedicine persist. Section 709 of the Telecommunications Act of 1996 required the Secretary of Commerce to submit a report<sup>3</sup> to

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<sup>1</sup>1996 Act, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. Section 151 *et. seq.*

<sup>2</sup>Recommended Decision, para. 632.

<sup>3</sup>U.S Department of Commerce, National Telecommunications and Information Administration, "Telemedicine Report to the Congress," January 31, 1997.

Congress on the use of advanced telecommunications services for medical purposes by January 31, 1997.

The report revealed that significant non-fiscal barriers to the effective implementation of telemedicine remain and that such barriers significantly impair the usefulness of telemedicine services to rural communities. For example, health professionals must be licensed at the state level, thus the practice of interstate medical consultations through telemedicine raises the issue of appropriate licensure. The report also found that the reluctance of third party payers to cover the costs of telemedicine poses a significant barrier to the widespread use of telemedicine. According to the report, even the federal programs, Medicare and Medicaid, only provide limited coverage for telemedicine services. Other issues include:

- privacy and security issues associated with telemedicine;
- the lack of technical, educational, and clinical practice guidelines for telemedicine; and
- lack of a user-friendly inventory of available assistance programs for telemedicine.

The continuing uncertainty about the impact of non-fiscal obstacles on the cost-effectiveness of telemedicine causes us to recommend an incremental approach to the implementation of Section 254(h)(1)(A). A recent report<sup>4</sup> by the General Accounting Office (GAO) identified three critical elements for the successful deployment of telecommunications services in rural communities:

- a basic understanding of telecommunications and the potential benefits;
- the development of a strategic plan to determine the technical and financial feasibility of telecommunications deployment; and
- partnerships among community leaders.

Until the communities have had an opportunity to take these steps, it is prudent to proceed with a cautious program which will address the known telemedicine needs of rural communities. As the use of telemedicine expands, effective monitoring mechanisms will be critical for providing information needed to improve telemedicine programs. We strongly endorse the adoption of monitoring programs to facilitate a thorough review in 2001.

When developing telemedicine programs, our overriding objective should be to develop a cost effective, useful, and easily administered federal universal service program to assist eligible health care providers. Recognizing the limited resources of the rural health care providers, the program should also impose minimal administrative burdens on the health care providers. In the following comments, we address issues which merit further consideration by the FCC.

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<sup>4</sup>United States General Accounting Office, Report to the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate; "Rural Development: Steps Towards Realizing the Potential of Telecommunications Technologies," (GAO/RCED-96-155 Telecommunications Technologies in Rural Areas), June 1996.

### *Network Buildout*

The 1996 Act mandates that health care providers in rural areas have access to similar services at reasonably comparable rates as are available to urban health care providers. The statute does not specifically contemplate the subsidization of network construction.

In its recommendation, the Advisory Committee suggested universal service funds should be used to help upgrade or build the public switched network (PSN) required for telemedicine. The Joint Board recommended that the FCC seek further information on the probable costs and advantages and disadvantages of supporting upgrades to the PSN.<sup>5</sup>

According to a GAO report entitled "Rural Development: Steps Towards Realizing the Potential of Telecommunications Technologies," there are 13 federal programs which provide funding for telecommunications programs. In fiscal year 1995, \$715.8 million was distributed for 540 projects. The bulk of the funding, \$585 million, came from the Rural Utilities Service in the form of long-term loans to improve rural telecommunications infrastructure. The Federal Agriculture Improvement and Reform Act of 1996 authorized \$100 million annually for the Distance Learning and Telemedicine Loan Program. Furthermore, the Department of Health and Human Services made \$5.1 million available in grants to improve medical care in rural areas through the use of telecommunications. These programs should be utilized to develop any additional network facilities that are needed to obtain telecommunications services for telemedicine.

If the FCC proceeds with a program to support network buildout, there are practical concerns which should be addressed.<sup>6</sup> If the construction of the network is subsidized, some capacity on the network could subsequently be used to offer services to non-telemedicine customers. Thus, the federal fund would have subsidized the network buildout for one set of consumers, but that network could generate new revenues from other customers. We also have concerns about the competitive neutrality of this proposal because the new facilities of early entrants would be subsidized by the federal program while the new facilities of subsequent entrants might not be subsidized.<sup>7</sup>

### *Toll Free Internet Access*

Section 254(h)(1)(A) states that health care providers in rural areas should have access to similar services at rates comparable to those available to health care providers located in urban areas. In considering how to provide comparable access to the Internet for rural health care providers, it is apparent that the major cost difference lies in the toll charges incurred by health care providers who do not have local dial up access to the Internet.<sup>8</sup> Therefore, the State members of the Joint Board

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<sup>5</sup> Recommended Decision of the Federal-State Joint Board in CC 96-45, para. 683.

<sup>6</sup>PacTel Comments, p. 59.

<sup>7</sup>WorldCom Comments, p.33.

<sup>8</sup>Nebraska Hospitals Comments, p. 1-2; Nurse Practitioners Comments, p. 2-3.

agree that the lack of toll-free Internet access for rural health care providers should be corrected through a variety of strategies. However, we are concerned that this support program not create new artificial disincentives for economic network construction to meet demand for local dial-up access to the Internet. For example, a potential and undesirable outcome of supporting toll-free Internet access could be to discourage aggregation of demand in rural communities. Therefore, we would only support funding the toll charges for one access line to the Internet for a rural health care provider if all other options for affordable Internet access have been exhausted. To ensure that support for toll-free Internet access is properly targeted, we recommend the definition of Internet access exclude ISP charges and any additional charges for content, software, or hardware. This definition is consistent with the Advisory Committee's recommendation. We further recommend that a cap be placed on the amount of universal service funds allocated towards toll-free Internet access. A cap, similar to that established for schools and libraries, is consistent with the Joint Board's objective to develop a cost effective program. The cap should be based upon fiscal data collected by the FCC in this proceeding.

#### *Alternative Providers*

Flexibility in service selection and cost effectiveness are obviously important principles to health care providers. The Joint Board recommended the adoption of "competitive neutrality" as a principle upon which all policies should be based. To ensure competitive neutrality and to expand the range of services available to health care providers, the FCC should use its authority under Section 254(h)(2)(A) to allow telecommunications carriers and other service providers to be eligible for support. Section 254(h)(2)(A) provides a broader framework for facilitating deployment of services to health care providers because the competitively neutral rules contemplated under that section are applicable to all service providers.

#### *Competitive Bidding*

Consistent with the goals of fostering competition and cost effectiveness, health care providers should seek competitive bids for services which would be subsidized by the federal program.<sup>9</sup> A competitive bidding process may encourage alternative providers to offer services and would ensure competitive neutrality. The Recommended Decision outlined the elements which must be included in a health care provider's request for support.<sup>10</sup> The health care provider should be further required to submit a copy of its request for bids to the administrator, and the administrator should make the request for bids available to all potential carriers via a website.

#### *Offset v. Reimbursement*

In the Recommended Decision, the Joint Board recommended that the FCC allow a carrier to treat the amount eligible for support as an offset toward the carrier's contribution to its universal

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<sup>9</sup>National Cable Television Association Comments, p. 26.

<sup>10</sup>Recommended Decision, para. 725.

service support obligation.<sup>11</sup> The Joint Board acknowledged that the FCC has the authority to allow direct reimbursement as the form of compensation.<sup>12</sup> We recommend that direct reimbursements be paid to non-telecommunications carriers providing services to rural health care providers. As stated above, we believe that pursuant to the FCC's authority under Section 254(h)(2)(A) and consistent with the principle of competitive neutrality, non-telecommunications carriers should be eligible to provide qualifying services to rural health care providers. Furthermore, if a carrier's contribution to the federal universal service mechanism is smaller than the amount of the offset, the carrier should be directly reimbursed for the difference between the offset and the contribution. We recommend that the calculation be done on an annual basis or on a time schedule which creates the least administrative burden.

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<sup>11</sup>*Ibid.*, para. 716.

<sup>12</sup>*Ibid.*

April 9, 1997

**SEPARATE STATEMENT OF  
COMMISSIONER LASKA SCHOENFELDER  
DISSENTING IN PART**

**On April 4, 1997, the State members of the Federal/State Joint Board submitted their report to the Federal Communications Commission (FCC) for its consideration before issuing final rules to provide universal service support to rural health care providers. The States' report is representative of the majority of the State members and I respectfully dissent on three of the report's recommendations (1) Toll Free Internet Access; (2) Direct Reimbursement; and (3) Alternative Providers. The following comments further express my concerns.**

**Section 254(h)(1)(A) provides that a telecommunications carriers shall offer a requested telecommunications service to a health care provider located in rural areas at a rate which is reasonably comparable to similar services offered to urban health care providers in that state. Furthermore, the carrier will receive an offset to its contribution to the federal universal service fund in an amount equal to the difference between the rural rate and the comparable urban rate for the service. This must be kept in mind as we determine what support should be given to the rural health care providers.**

***Toll Free Internet Access***

**The report recommends toll free access to internet for those rural health care providers located in areas that do not have local access to the internet. The report further states that in considering how to provide comparable access to the Internet for rural health care providers, it is apparent that the major cost difference lies in the toll charges incurred by health care providers who do not have local dial up access to the Internet. Therefore, the State members agreed that the lack of toll-free Internet access for rural health care providers should be corrected through a variety of strategies. The State members are concerned that this program not create new artificial disincentives to**

**appropriate network construction to meet demand. In limited circumstances, the State members would support funding the toll charges to access the Internet for rural health care providers. To ensure that support for toll-free Internet access is properly targeted, the State members recommended the definition of Internet access exclude ISP charges and any additional charges for content, software, or hardware.**

**The Act is clear that the carrier will receive an offset to its contribution to the federal universal service fund in an amount equal to the difference between the rural rate and the comparable urban rate for the service. I believe toll free access can not be considered a comparable rate. In addition, the Act is also clear under Section 254(2)(A) that states to enhance, to the extent technically feasible and economically reasonable, access to advance telecommunications. I believe that free toll access is not economically reasonable.**

### ***Offset v. Reimbursement***

**The report recommends that direct reimbursements be paid to non-telecommunications carriers providing services to rural health care providers. The report also states that if a carrier's contribution to the federal universal service mechanism is smaller than the amount of the offset, the carrier should be directly reimbursed for the difference between the offset and the contribution.**

**The Act is clear that the carrier will receive an offset to its contribution to the federal universal service fund in an amount equal to the difference between the rural rate and the comparable urban rate for the service. The Act has no provision for direct reimbursement to a carrier or non-telecommunications carrier for services provided to a rural health care provider.**

### ***Alternative Providers***

**The report recommends that to ensure competitive neutrality and to expand the range of services available to health care providers, the FCC should use its authority under Section 254(h)(2)(A) to allow telecommunications carriers and other service providers to be eligible for support.**



**Although, flexibility in service selection and cost effectiveness are obviously important principles, the Act once again is clear that the carrier will receive an offset to its contribution to the federal universal service fund in an amount equal to the difference between the rural rate and the comparable urban rate for the service. The Act has no provision for direct reimbursement to a carrier or alternative provider for services provided to a rural health care provider. In addition, Section 254(e) of the Act states that only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.**

**Based on the above comments I respectfully dissent on the recommendations submitted by the State members with respect to these three issues.**

**In closing, I would like to express my concern with respect to the impact the charges assessed to fund these programs may have on the subscribers bills. I believe the support required for these programs may contribute to increased local rates. I also believe that a Federal universal service fund that taxes subscribers billions of dollars is inconsistent with Congressional intent and could be extremely harmful to consumers nationwide.**